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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,337	10/28/2003	Wade Spicer	03140	8092

7590 08/10/2005  
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EXAMINER

LE, HUYEN D

ART UNIT PAPER NUMBER

3751

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/696,337

Applicant(s)

SPICER, WADE

Examiner

Huyen Le

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 5/10/2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4, 7-10 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-10 and 12-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The amendment filed 05/10/2005 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "with said groove having a depth which is not greater than 1/5 of a distance between said groove top and said bottom surface".

Applicant is required to cancel the new matter in the reply to this Office Action.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 8-10, 12-15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification at the time the application was filed, had possession of the claimed invention. Claims 8-10, 12-15 include "said groove having a depth which is not greater than 1/5 of a distance between said groove top and said bottom surface" which is new matter.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1- 4, 8-10, 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaanan et al (6,421,846).

The Shaanan et al reference discloses a base structure for an above ground swimming pool comprising an arcuate bottom track member 104 (Fig. 8), the bottom track member 104 having a bottom surface, a top surface 103a, an inner wall portion, an outer wall portion and a pair of end portions, the inner wall portion having a groove 103 formed therein, the groove 103 having a front inner lip constituting a groove top and a groove bottom which is located in a plane which is "substantially elevated" from the bottom surface, the groove 103 adapted to receive a bottom end of a side wall panel 18 of a swimming pool in a manner whereby the bottom end of the side wall panel 18 will be substantially elevated above a supporting surface upon which the bottom surface of the track member 104 is placed.

Although the Shaanan et al reference does not specifically disclose the dimension of the track member and the distance between the bottom of the groove and the bottom surface of the track member being at least two inches and the depth of the groove not greater 1/5 of a distance between the groove top and bottom surface, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select certain dimensions such as height, depth and length for the track member and the groove to best fit the base structure for a swimming in order to optimize its performance, since it has been held that discovering an optimum value of a

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result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ (CCPA 1980).

Regarding claim 8, the base structure comprises a plurality of spaced apart base member 92.

Regarding claim 12, the base members support vertical column 14 of the swimming pool structure.

Regarding claim 13, the bottom track member 104 and the base members 92 removably interlock with one another.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shaanan et al (6,421,846).

The Shaanan et al reference discloses a base structure for an above ground swimming pool comprising a bottom track member 104 having an inner surface, the inner surface having a lower portion located below the groove 103 and an upper portion located above the groove where in the upper portion is generally vertical and the lower portion slopes outwardly.

Although the Shaanan et al reference does not specifically disclose what sloping angle the lower portion is, it would have been obvious to one having ordinary skill in the art at the time the invention was made to select a certain dimension for the sloping angle of the lower portion of the inner surface of the bottom track member to best fit the base structure for a swimming in order to optimize its performance, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ (CCPA 1980).

***Response to Arguments***

7. Applicant's arguments filed 05/10/2005 have been fully considered but they are not persuasive.

In regard to the applicant's arguments with respect to Shaanan et al that the groove 103 is in top track and is not in the inner wall portion as claimed, examiner respectfully disagrees with the applicant's assertion. Attention is directed to Figure 8 of Shaanan et al which clearly shows a bottom track member 104 having a top surface 103a (where numeral 103a points at), a front surface below the top surface 103 (extending to the bottom of the track member 104) constituting an inner wall and the groove 103 formed therein.

In regard to the applicant's arguments that the bottom of the groove of Shaanan et al does not "substantially elevate" above the bottom surface of track member as claimed, examiner respectfully disagrees with applicant. Figure 8 of Shaanan et al shows that the groove 103 "substantially elevates" above the bottom surface of the track 104. Elevating the groove and making the groove with any desired dimensions for a track member would be obvious to one of ordinary skill.

8. Applicant's arguments with respect to claims 1-4, 7-10, 12-15 have been considered but also are moot in view of the new ground(s) of rejection.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huyen Le whose telephone number is 571-272-4890. The examiner can normally be reached on Monday-Friday from 9:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on 571-272-4835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

HL

August 4, 2005

  
**JUSTINE R. YU**  
**SUPERVISORY PATENT EXAMINER**  
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